

REMARKS

Claims 1 through 23 are in the application, with Claims 1, 7, 11, 15 and 20 being independent. Claims 20 through 23 have been withdrawn from consideration. Contrary to the outstanding Office Action, Applicants note that the previous Response distinctly and specifically pointed out the error in the previous Restriction Requirement (i.e. the restricted claims clearly represented a subcombination/combination under M.P.E.P. §806.05(c)II), and therefore the Response should be considered an election with traverse.

Claims 1 through 19 are subject to a new restriction requirement. In particular, the Office Action groups the claims into Claims 1 through 6 (Group I), and Claims 7 through 19 (Group II). In response to the restriction requirement, Applicants provisionally elect Claims 1 through 6. Examination and allowance of the elected claims are respectfully requested. This election is made with traverse for the foregoing reasons.

Restriction is proper only where an application contains claims directed to two or more independent or distinct inventions. As described in M.P.E.P. §806.05(h), the test for determining distinctness of claims directed to a product and to a process for using the product includes two prongs, and the claims may be deemed distinct if either prong is satisfied. The Office Action characterizes the two prongs are as follows: “(1) that the process for using the product as claimed can be practice with another materially different product, or (2) the product as claimed can be used in a materially different process of using the product (sic)”.

The claimed inventions were apparently deemed to be distinct because methods of Group II “can be used on a non-volatile SOI flash memory which is a materially different device from Claim 1”. The Office Action therefore relies on prong (1) of the above test.

Applicants submit that prong (1) is not satisfied because the Group II claims describe processes to read and write values from and to a specific type of memory cell, and because the Group I claims are directed to the specific type of memory cell. Therefore, practice of the Group II process necessarily involves a product that is materially similar to the Group I product. In other words, the process as claimed clearly cannot be practiced with a materially different product. For example, if the Group II claims were practiced with the “non-volatile SOI flash memory” mentioned in the Office Action, then the non-volatile SOI flash memory would include a memory cell according to the Group I product. Withdrawal of the outstanding Restriction Requirement is therefore respectfully requested.


CONCLUSION

Applicants therefore request withdrawal of the outstanding restriction requirement and examination of Claims 1 through 19 on the merits. In this regard, Claims 1 through 19 are believed to be in condition for allowance and such action is respectfully requested at the Examiner's earliest convenience.

If there remains any question regarding the present application, or if the Examiner has any suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact the undersigned via telephone at (203) 972-0049.

Respectfully submitted,

July 19, 2005
Date



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